In re Patent Application of:	)	Conf. No.: 9253
	)	
Geywitz et al.	)	
	)	
Application No.: 10/588,651	)	Group Art Unit: 3655
	)	
Filed: August 7, 2006	)	Examiner: LEWIS
	)	
For: Method for controlling the engine of a motor vehicle having a manual transmission	)))	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Honorable Commissioner for Patents
P.O. Box 14507
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants request review of the final rejection of May 23, 2011, in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reasons stated on the attached sheets.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account 14.1437. Please credit any excess fees to such account.

Remarks

The Office Action indicates claims 5 – 7 and 15 – 20 are allowed. The rejection of claims 1, 10, and 14, citing 35 U.S.C. §102(b) and FR 2785238 is in error and should be withdrawn prior to appeal.

Claim 1 requires the approval criterion to be a function of engine torque. The FR reference teaches employing predetermined torque limits when the engine is starting (paragraph [0010]) and when the clutch is in a skating condition (paragraph [0013]). Therefore, the FR reference does not require approval criteria to be a function of engine torque. Second, claim 1 requires the default engine torque to be determined as a function of at least one current engine characteristic. The FR reference sets fixed limit values for torque based on a mode selection.

In response, the Office action asserts,

> the torques 4, 6, 7 is [*sic*] determined as a function of the predetermined torque 2a because these torques are limited under the torque 2a, so without knowing what the torque 2a is, the control unit wouldn't know the amount of reduction needed for the torques 4, 6, 7, also torque 2a is a current engine characteristic because this torque is considered to be the torque which is occurring when the torques 4, 6, 7 are not used. OA at pages 2 – 3.

This assertion demonstrates that the rejection is being maintained based on a simple misunderstanding of what it means for one variable to be a function of another variable. It is respectfully submitted that in mathematics a function is a variable so related to another that for each value assumed by one there is a value determined for the other. In order for torques 4, 6, and 7 to be a function of torque 2a, they would need to be determined by torque 2a. They are not. Torques 4, 6, and 7 are predefined and their values are not determined based on torque 2a.

The Advisory Action mailed August 05, 2011 asserts, "[t]he limitation recites [*sic*] in claim 1 that the default engine torque is determined 'as a function of' at least one current engine characteristic, not that it is determined by at least one current engine characteristic." First, it is ironic that this assertion, which makes reference to the claim language, entirely fails to consider the claim language. Again, claim 1 requires the

default engine torque to be determined as a function of at least one current engine characteristic. Second, this assertion perpetuates the misunderstanding of what it means for one variable to be a function of another variable. Again, in mathematics a function is a variable so related to another that for each value assumed by one there is a value determined for the other. The rejection is in clear error and should be withdrawn prior to appeal.

The rejection of claim 1, 8 – 10, and 14, citing 35 U.S.C. §103(a), US 6,258,008 to Tabata et al. (hereinafter, "Tabata") and US 6,000,376 to Hess et al. (hereinafter, "Hess") is traversed and should be. Tabata doesn't disclose the method for reducing the engine torque as claimed. Hess does not provide any approval criterion. According to Hess operating variables can include a desired torque value, a signal representing a degree of actuation B, engine speed, engine load, and engine temperature (See column 2, lines 36 – 55). These operating variables are not approval criterion, because Hess's method proceeds regardless of what the operating variables happen to be. According to Hess, the operating variables are merely separated into a desired torque value for the charge path and a desired value for influencing the metering of fuel and/or the ignition angle. Therefore, according to Hess, nothing is contingent upon satisfying an approval criterion for an engine torque. Tabata, Yoshida, and Mabuchi are not cited to compensate for the above-discussed shortcomings of Hess.

The Advisory Action acknowledges, the operating variables in column 2, lines 36 – 55 of Hess are not approval criteria. The Advisory Action redirects all focus to column 1, lines 54 – 67 of Hess with respect to approval criteria. In short, the Advisory Action rests the entire rejection on whether column 1, lines 54 – 67 of Hess disclose approval criteria, but this portion of Hess does not disclose approval criteria:

> The solution according to the invention is especially advantageous in operating states wherein the torque change especially the torque build-up, is already known in advance. This applies, for example, to a torque change: by the driver via pedal actuation, for interventions of a drive-slip controller or an engine drag torque controller, of a driving dynamic controller or like control system when loads are applied such as climate control, in the case of a start and/or during warm-running in combination with catalytic converter heating measures. In these operating

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> states, the torque change is undertaken correctly
> dynamically by the separation of the torque desired value
> into a desired value for the charge path and a desired value
> for the rapid interventions which can assume different
> values.

The citation column 1, lines 54 – 67 of Hess adds nothing. This portion of Hess is merely a summary of Hess's invention. According to claim 1 of the present invention, the entire method is contingent on satisfaction of an approval criterion: "when at least one approval criterion is satisfied for an engine torque which is dependent on the driving state of the vehicle…." Hess's method proceeds regardless of what its operating variables happen to be. Therefore, Hess fails to teach a method contingent upon satisfaction of approval criterion. The rejection is in clear error and should be withdrawn prior to Appeal.

The rejection of claim 13, citing 35 U.S.C. §103(a), Tabata, Hess, and US 6,742,498 to Mabuchi et al. (hereinafter, "Mabuchi") is traversed and should be withdrawn. This rejection should be withdrawn because of the shortcomings of the combination of Tabata and Hess as already discussed.

The Director is hereby authorized to charge any deficiency in fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account 14-1437. Please credit any excess fees to such account.

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Respectfully submitted,

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